

ORIGINAL
OPEN MEETING AGENDA ITEM



BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE
APPLICATION OF ARIZONA
WATER COMPANY TO EXTEND
ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY
IN CASA GRANDE, PINAL
COUNTY, ARIZONA

Docket No. W-01445A-03-0559

**ARIZONA WATER COMPANY'S (1)
RESPONSE TO INTERVENOR
CORNMAN TWEEDY'S REQUEST TO
SET HEARING DATE, (2) RESPONSE TO
MOTION TO COMPEL AND
ALTERNATIVE MOTION FOR
PROTECTIVE ORDER, (3) MOTION FOR
PROCEDURAL CONFERENCE, AND (4)
REQUEST FOR ADDITIONAL TIME TO
COMPLY WITH FILING REQUEST**

Arizona Water Company hereby responds in opposition to recent intervenor Cornman Tweedy 560 LLC's ("Cornman Tweedy's") February 24, 2006 Request to Set Hearing Date and March 7, 2006 Motion to Compel. Arizona Water Company also moves in the alternative for a protective order barring the discovery requested by Cornman Tweedy at this stage, and, in lieu of a hearing date, requests that a procedural conference be set to address these and other procedural issues in the case. Finally, since the 365-day extension initially requested by Arizona Water Company in its March 30, 2005 Request for Additional Time to Comply with the Filing Requirement ("Request for Additional Time") is about to expire due to no fault of the Company, Arizona Water Company requests an additional 365

1 days, or that its original Request for Additional Time be considered amended so as to
2 request an additional 365 days, in light of the delays occasioned by Cornman Tweedy and
3 its related entities' filings in this docket.^{1/}

4 I. **INTRODUCTION.**

5 Cornman Tweedy apparently believes that by burdening this proceeding further with
6 premature discovery requests, docketed responses to personal correspondence, requests to
7 set hearings that need not be held and motions to compel irrelevant and inappropriate
8 discovery, the Commission will overlook the fact that neither it, its predecessors in interest,
9 its parent (Robson Communities) or its sister utility company (Picacho Water Company)
10 timely appeared or intervened in the underlying case in which Arizona Water Company was
11 awarded a Certificate of Convenience and Necessity ("CCN") to serve Cornman Tweedy.
12 See Decision No. 66893 (April 6, 2004) (the "Decision"). Cornman Tweedy also
13 conveniently ignores the fact that neither Robson Communities nor Picacho Water
14 Company has been given leave to intervene or appear in these proceedings and that
15 Cornman Tweedy has only been granted intervention on a limited basis, because it has no
16 standing other than as the entity Robson Communities created to purchase property within
17 Arizona Water Company's relevant CCN area. Cornman Tweedy's participation in this
18 docket should be limited to being on the notice list for pleadings filed and the eventual entry
19 of orders by the Commission. No hearing is necessary, as Administrative Law Judge
20 Amanda Pope's May 10, 2005 Recommended Order stands ready for entry by the
21 Commission.

22 Arizona Water Company further disagrees with Cornman Tweedy's assertion that it
23 is consistent with the orders entered in this case to proceed with far-flung and invasive
24 discovery as if it had timely intervened in the original proceeding, especially where the
25

26 ^{1/} Given the passage of time due solely to the Robson entities' efforts to collaterally
27 attack Decision No. 66893, Arizona Water Company also requests an additional 365 days –
28 through March 30, 2007 – to comply with the initial filing request, and urges that ALJ
Pope's Recommended Order be revised accordingly by the Commission.

1 issues remaining, if any, have not yet even been framed, and its last-minute attempt to
2 intervene was narrowly limited by the ALJ.

3 In any event, a number of procedural issues have been briefed by Arizona Water
4 Company, Cornman Tweedy and Staff, and these issues need to be resolved first in order to
5 determine the scope of remaining proceedings (if any) in this docket. The overbroad,
6 burdensome and irrelevant data requests propounded by Cornman Tweedy relate to the
7 merits of issues that the Commission has already decided, and have nothing to do with the
8 remaining issues in this case as this docket presently stands. Accordingly, Cornman
9 Tweedy's motions and requests should be denied in their entirety, and a protective order
10 should be entered barring the discovery sought by Cornman Tweedy.

11 **II. THERE IS NO NEED TO SET A HEARING IN THIS MATTER, AND**
12 **INSTEAD A PROCEDURAL CONFERENCE SHOULD BE SET.**

13 The relevant hearing in this matter has already occurred. It took place on February
14 17, 2004, after which Arizona Water Company was granted a CCN in the Decision. Neither
15 Robson Communities, nor Picacho Water Company, nor Cornman Tweedy intervened or
16 appeared in that hearing or opposed Arizona Water Company's application. Further,
17 Arizona Water Company timely filed its request for additional time to comply with the
18 filing requirements concerning post-decision CCN matters on March 30, 2005. Again,
19 neither Robson Communities, nor Picacho Water Company, nor Cornman Tweedy
20 attempted to intervene in the action before the Recommended Order of ALJ Pope granting
21 Arizona Water Company's Request for Additional Time was docketed. ALJ Pope's
22 Recommended Order (as amended to reflect the requested extension) stands ready to be
23 submitted to the Commission for final action, and no further hearings or proceedings are
24 necessary.

25 In the meantime, a number of tactics have been employed by Robson Communities
26 and its affiliates and subsidiaries to thwart the provision of public water utility service to
27 Arizona Water Company's CCN area at issue. The parties have briefed and argued a motion
28 to consolidate various motions to intervene, and, most recently, have submitted legal

1 memoranda on the meaning and effect of the “null and void” language in the Decision.
2 Intervention has been denied to all but Cornman Tweedy, who has standing only as a
3 successor in interest to a previous property owner who did not intervene or assert any
4 position regarding the Decision. The Commission has not formally ruled on the motion for
5 consolidation, but has granted procedural orders consistent with the denial of that motion. A
6 procedural conference should be set to address how the ALJ wishes to address the “null and
7 void” issue, which has been fully briefed and is ready for decision, and to which discovery
8 is neither appropriate nor necessary.

9
10 **III. CORNMAN TWEEDY’S MOTION TO COMPEL SHOULD BE DENIED,**
11 **AND A PROTECTIVE ORDER SHOULD BE ENTERED REGARDING ITS**
12 **FIRST SET OF DATA REQUESTS.**

13 As set forth in Cornman Tweedy’s Motion to Compel, in the midst of the ALJ’s
14 consideration of the briefing and other procedural issues, Cornman Tweedy submitted a set
15 of data requests to Arizona Water Company dated January 31, 2006. A review of those data
16 requests shows that they relate solely to a collateral attack on the Decision, a matter that has
17 already been heard, is closed, and to which Cornman Tweedy has no standing to participate.
18 The Decision number is recited in literally every one of the 14 data requests, as if Cornman
19 Tweedy had timely and properly intervened back in 2003 and still had standing to address
20 any of these issues, which, of course, it does not.

21 Further, even if those matters remained at issue, which they do not, the data requests
22 are overbroad and burdensome, especially considering that it remains to be seen whether
23 there will be further hearings in this docket. The identity of Arizona Water Company’s
24 customers, and requests for service/will serve letters, as well as main extension agreements
25 with its customers or private communications with its customers (Requests CMT 1.1
26 through 1.5) are completely irrelevant to the issue remaining in these proceedings. Arizona
27 Water Company’s knowledge as to planned residential and commercial development, its
28 internal projections for water demand, its internal map design plans and studies concerning
its system, the status of construction of such infrastructure, and related issues (Requests

1 CMT 1.6 through 1.10) are either available through other public records or are irrelevant to
2 any of the remaining issues. Requests directed to Arizona Water Company's source of
3 supply water, treatment, certificates of assured water supply and administrative compliance
4 with the Decision (Requests CMT 1.11 through 1.14) are also irrelevant, as Cornman
5 Tweedy has no standing to collaterally attack the Decision, nor would it be procedurally
6 proper to address any of those issues in this proceeding, as they are beyond the scope of the
7 narrow issues raised in Arizona Water Company's Request for Additional Time. Much of
8 the requested information is otherwise available in appropriate public filings made by
9 Arizona Water Company.

10 On their face, these requests were premature and inappropriate, and counsel for
11 Arizona Water Company so notified counsel for Cornman Tweedy via a telephone call and
12 letter dated February 10, 2006. Rather than engage in a reasoned discussion, Cornman
13 Tweedy's counsel responded with a self-serving letter that it docketed in this proceeding
14 (See February 17, 2006 letter), then filed a Motion to Compel. Arizona Water Company's
15 February 10, 2006 letter cogently states reasons why discovery is premature and gave every
16 notice to Cornman Tweedy that Arizona Water Company properly objected to them.

17 After failing to timely appear or participate under the Commission rules while the
18 matter was legitimately open for consideration, the Robson entities instead laid in wait.
19 They have intentionally frustrated and prevented Arizona Water Company's compliance
20 with certain post-Decision directives, then filed a new application through Picacho Water
21 Company on the far-fetched premise that the Decision no longer existed. For the reasons
22 already briefed, this procedural ploy constitutes an impermissible collateral attack on the
23 Decision. Cornman Tweedy's attempts to further harass and interfere with Arizona Water
24 Company by making improper and burdensome data requests is only in furtherance of its
25 bad faith actions in this and the Picacho Water Company docket (No. W-03528A-05-0281)
26 to date. A protective order is appropriate in these circumstances.

27 Finally, Cornman Tweedy alleges that "AWC is engaged in a strategy of delay in this
28 docket." (Motion to Compel, p. 2, line 18). Nothing could be further from the truth.

1 Arizona Water Company has consistently stated that this matter is ready for final resolution
2 by the Commission through adoption of ALJ Pope's May 10, 2005 Recommended Order (as
3 amended). Cornman Tweedy's tactics only underscore the public policy reasons why
4 Arizona Water Company's request should be granted, and the "null and void" conditions in
5 Decision No. 66893 be considered fulfilled.

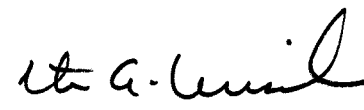
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7 **IV. CONCLUSION.**

8 For the foregoing reasons, the ALJ should set this matter for a procedural conference,
9 deny Cornman Tweedy's Request to Set Hearing and Motion to Compel, and enter a
10 protective order suspending responses to Cornman Tweedy's First Set of Data Requests and
11 any other further discovery attempts until the framework of how this matter is to proceed is
12 established. Finally, Arizona Water Company's original Request for Additional Time
13 should be extended an additional 365 days, to March 30, 2007, to accommodate the delay
14 that has been occasioned in this proceeding by the Robson entities.

15 Respectfully submitted this 16th day of March, 2006.

16 BRYAN CAVE LLP

17
18 By


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28

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